

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,994 &

) 13,063

Appeal of)

)

INTRODUCTION

The petitioner filed an appeal in this matter following a decision by the Department of Social Welfare reducing his food stamps because of the alleged failure of the petitioner to verify medical expense deductions from his unearned income. Following the petitioner's request for hearing the Department amended its decision, and the petitioner now concurs with the Department's determinations as to the amount of his food stamps and the documentation that is acceptable in verifying his excess medical expenses. However, the petitioner seeks from the board "condemnation" and "sanctions" concerning the manner in which his case was handled by district office personnel.

DISCUSSION

The petitioner takes issue with the fact that his caseworker, in seeking to verify his excess medical expenses, contacted every pharmacy in his town of residence without his knowledge or consent. The only justification offered by the Department for this action was that the worker was simply "attempting to take the burden of verification off the petitioner's shoulders". Even if this was the Department's sole motivation, however, the petitioner is correct in maintaining that this action was paternalistic, contrary to the regulations, and violative of his right to privacy. The proper course of action for the Department in cases in which it feels excess medical expenses have not been sufficiently documented is to notify the household that it considers verification insufficient, certify the household for food stamps without the medical deduction, and to adjust the benefit amount when the household provides the necessary verification. Under no circumstances may the Department unilaterally, and without the household's knowledge, undertake the type of fishing expedition it did in this case in an attempt to ascertain the household's medical expenses. See Food Stamp Manual (F.S.M.) § 273.2(f).

The petitioner next maintains that the Department violated the board's Fair Hearing Rules in this matter by not providing him with a written notice of the "Agency Review" of his case as provided in Food Stamp Fair Hearing Rule No. 3. ⁽¹⁾ The petitioner has inadvertently identified a persistent laxity in the Department's formal compliance with, and the board's enforcement of, this particular provision in the

hearing rules. While there is no allegation or indication that the petitioner was, in fact, ultimately prejudiced by the Department's failure to provide this notice, he is correct that the board's rules should be followed.⁽²⁾

The petitioner next takes the Department to task for sending him erroneous written notices informing him that his benefits would not continue at their prior level during the pendency of this fair hearing. Although the petitioner's food stamps were not, in fact, reduced, the petitioner is again correct that the Department's notices should accurately reflect the action that is being taken in an individual's case.⁽³⁾

The petitioner also protests the Department's "unilateral" attempts to verify his medical expenses even after he had requested a fair hearing in the matter. While the hearing officer (and the petitioner) agree with the Department that as a general matter there is nothing wrong with the Department continuing to attempt to "resolve an issue" during the pendency of a fair hearing, one of the issues in this case was whether the Department was justified in seeking verification of his medical expenses. The Department should not have persisted in the very efforts the appropriateness of which the petitioner had specifically challenged, and which were the subject of a pending fair hearing.

The remainder of the petitioner's grievances concern the Department's failure to appropriately and timely respond to his complaints about his caseworker, and the alleged "harassment" of him by his caseworker and other Department personnel. Since no evidence was taken in this matter⁽⁴⁾ the hearing officer has no basis to judge whether the Department's treatment of the petitioner was, in fact, "deliberate, willful, and malicious", as claimed by the petitioner. The board has consistently eschewed, however, involving itself in charges regarding the competency of and alleged discrimination by agency personnel.

The board's statutory function is to review "decisions of the agency" that affect an aggrieved individual's receipt of assistance or services from the agency, and to order "appropriate relief" when such decisions or policies are found to be contrary to law. 3 V.S.A. § 3091(d). The issues concerning Department actions in the petitioner's case that affected his receipt of food stamps and fair hearing rights have been addressed above--and, where appropriate in the judgement of the hearing officer, such actions have been declared contrary to applicable law and policy. The petitioner is free to pursue his complaints against individual employees of the Department through the office of the Commissioner. As a matter of law, however, it is not "appropriate" for the board to consider issues that are essentially personnel matters of the Department.

ORDER

The Department's actions of contacting all the pharmacies in the petitioner's town of residence, not providing a timely formal "agency review", sending incorrect notices, and pursuing its verification attempts after the petitioner had appealed their propriety are declared contrary to applicable law and policy. The board declines jurisdiction over and consideration of the petitioner's complaints that are specific to individual Department employees.

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1. Food Stamp Fair Hearing Rule No. 3 provides:

Agency review. Within ten days from the receipt of a request for fair hearing, the commissioner of the

department of social welfare shall review the appellant household's complaint and determine whether the appellant household is entitled to have the relief it is seeking.

If the commissioner does not grant that relief, he shall notify the appellant household and the hearing officer accordingly. In this notice he shall disclose the facts and the legal authority that influenced his decision.

Upon good cause shown the hearing officer may grant an extension of time for completing this review.

2. The board, with the Department's participation and cooperation, is currently considering amendments to its rules that would make agency review of fair hearings more meaningful and timely to petitioners.
3. The hearing officer is not aware of any recurrent or systemic problems regarding continuing benefits in fair hearings or the Department's notices in that regard.
4. The Department admitted the factual bases of the petitioner's complaints addressed above.